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## **Diverse Democracies and the Practice of Federalism**

James Kennedy,  
Department of Sociology, University of Edinburgh

### **Introduction**

This chapter argues descriptively that while informal practices of federalism exist outside the framework of formal federations, normative federations require practices of federalism both to safeguard territorial accommodation and to effectively reconcile unity and diversity. The chapter considers this relationship in four instances: interwar Czechoslovakia, post-Quiet Revolution Canada, post-Franco Spain, and post-devolution United Kingdom. These are multinational states that, with the exception of Canada, are not conventionally considered as federations; yet in each the practices of federalism were and remain key to the management of diversity and stability. While there is a particular focus on the familiar sub-state nations of Québec, Catalonia and Scotland within their respective states, the attempt here is to place them, and contemporary developments in Spain and the UK, within an historical context, and in this regard Czechoslovakia offers additional comparative leverage. Each of the cases underline the importance of shared norms and understandings contained in the practices of federalism. The concluding section reflects on the theoretical and substantive lessons learned from engagement with these historical and contemporary cases.

### **Theoretical Foundations**

The political philosopher John Stuart Mill ([1861] 1991: 444-5) argued that ‘a people may have the desire, and the capacity, for a closer union than one merely federal, while yet their local peculiarities and antecedents render considerable diversities desirable in the details of their government.’ Mill was grappling with the ways in which unity and diversity might be reconciled within a single state, and in doing so he reflected upon the union between Scotland

and England and the way in which ‘a totally different system of law, and very different administrative institutions, may exist in two portions of a country without being any obstacle to legislative union.’ This, of course, required a very considerable capacity for the tolerance of territorial diversity.

Implicitly, it might be said that Mill was making a distinction between formal institutionalised ‘federations’, with their clear institutional separation of powers and nicely summarized in Elazar’s (1987) oft quoted phrase that federations combine both ‘self rule and shared rule,’ and the more informal ‘practices of federalism,’ in which diverse, territorially concentrated groups (national, linguistic, religious, etc.) are recognised in a variety of ways that are not necessarily institutional. This chapter explores the relationship between formal institutional federations and the informal practices of federalism. This is to distinguish between ‘federation’ and ‘federalism’ (King 1982). *Federation* refers to institutional makeup, as in Riker’s (1964) classic study, which is marked by the division between the government of a federation and the governments of member units that share governance over the same territory and people. While *federalism* is more sociological, and as Livingstone (1952) suggests, is concerned with articulating and protecting the federal qualities of a particular society, in which diversity is grouped territorially. This is succinctly caught by François Rocher’s (2009) distinction between ‘federation as a principle of organization’ and ‘federalism as a normative model.’

Richard Simeon (2009) offers the following as examples of informal processes and practices that can give rise to adaption and change within federations: ‘interpretations of the constitution by the courts, changes in party systems and alliances, changing fiscal arrangements, and intergovernmental accords, agreements, and concordat’. The practices that are the focus here are more informal still and more general; that is, they evidence an overarching philosophy that seeks to reconcile unity and diversity and one that corresponds,

in part, to Máiz et al.'s (2010) call for a philosophy of 'plurinational federalism', which governs the interaction between politicians. It shares much with Michael Burgess' (2012) evocative use of the idea of the 'federal spirit' as a 'distinct set of political values and principles.' Burgess suggests that in abstract theoretical terms, the federal spirit can be understood as

essentially a moral undertaking or enterprise in that it is based upon the faith and trust that is bound up in the commitment of a promise or a voluntary agreement, itself rooted in the recognition and equality of partnership. The moral basis of such an association or union arises from the presumed integrity and mutual respect of the participating entities (Burgess 2012: 7-8).

Of course, in reality, federations originate through a multitude of circumstances. And theorists of federalism recognize this in how they conceive the federal spirit. These vary considerably in each of the hugely influential conceptions of federalism (those by Kenneth Wheare, William Livingstone, William Riker, Carl Friedrich, and Daniel Elazar), which Burgess (2012) reviews. Each offers a somewhat different emphasis.

Burgess usefully discerns four broad recurrent 'properties', which he calls *self-restraint* through an awareness of respective federal and state interests; *damage limitation* not to imperil the federation in the exercise of power; *moral imperative* to observe unwritten constitutional norms; and *political empathy* in relations between levels of government. Taken together they are concerned with identifying the unwritten norms that should govern relations between the political units within a federation based on mutual respect (Burgess 2012: 20-1). I share Rocher's (2009: 97) warning that 'to canonize these fuzzy concepts would be to risk the substitution of a hermeneutic approach with the ideological justification, explicit or implicit, of certain political options.' Rocher (2009: 98-99) instead offers an approach that conceives federalism as a normative commitment to both autonomy and interdependence.

I want to extend this a little and suggest that what must underpin that commitment is what John Hall (2013: 22) has referred to as ‘civility’ which is ‘based on recognition of difference and diversity’ as itself underwritten by ‘the agreement to tolerate, albeit within clear limits, so that it becomes possible to live in peace’. Those limits are grounded in liberalism and respect for individual autonomy. Civility might be extended to the realm of federations and respect for state autonomy, and the diversity often embodied in these entities. My own conception, therefore, shares much in common with Burgess, and his careful dissection of the properties that the ‘federal spirit’ might embody, but I wish to place it within a broader context and position it alongside the need for a civil politics, as outlined by Hall. I argue that the practices of federalism must be grounded in the *tolerance of territorial diversity*, most especially when territories are understood in national or ethnic terms.

### **Building Federalism and Federation: Interwar Czechoslovakia**

Interwar multi-ethnic Czechoslovakia was something of a liberal oasis in East Central Europe (ECE), under its presidents, Tomáš Masaryk (1918-35) and Edvard Beneš (1935-38). While across ECE post-Versailles states were turning rightist and authoritarian, Czechoslovakia remained a functioning constitutional liberal democracy until it was effectively dismembered and then absorbed within the expanding Nazi Empire. Through the interwar it acquired something of the trappings of a federation and its constituent territories became increasingly politically delimited (e.g. the Slovakia and Ruthenia, previously subdivided into counties, became political entities). Yet it was the practices of federalism undertaken by its founding president Masaryk and his successor Beneš that secured its stability for so long.

Czechoslovakia was created with a declaration of independence in 1919, while the precise boundaries of the new state were formalised the following year. It brought together territories and ethnic groups that had been governed by both sides of the Habsburg Dual

Monarchy: Austrian ruled Bohemia, Moravia and Silesia, and Hungarian ruled Slovakia and Ruthenia. Importantly, it also comprised a very significant German-speaking minority, largely concentrated in the Sudetenland to the west, south and north of the former Austrian ruled Czech lands, and which constituted between a fifth and a quarter of the total population. It was the accommodation of this minority that was to exercise considerable attention of the Czechoslovak government (King 2002: chapter 5).

The Versailles minority treaties regime to which Czechoslovakia was subject played an important role in the developing tensions with the German-speaking minority. Intended as a way of accommodating minorities within the new states across ECE, the Czechoslovak minority treaty was oriented to the accommodation of Germans, Jews and Ruthenians (only the latter was regarded as a national minority). It provided individual rights to members of these ethnocultural communities in the form of, for example, a right to minority language schooling. Like its counterparts elsewhere, there was resentment on the part of the Czechoslovak state that its domestic sovereignty was infringed by a system that did not apply to western states. Moreover, the once dominant German-speakers had experienced an ‘ethnic reversal’; this once ‘dominant majority’ had suffered a reversal in its political status, and resented this decline (Riga and Kennedy 2009). Extreme nationalists manipulated the minority treaty for their own ends, and this was further exacerbated by geopolitics.

The German political parties had initially set themselves against the new state. That is, the interwar Czechoslovak state was founded as Czech, and that Czechness remained ethnic, rather than civic, and with an anti-German strain. However, this needs to be qualified, since Czechness could be acquired. Indeed, the expectation towards the end of the 1920s was that as German children acquired native Czech language proficiency through attendance at Czechoslovak schools, the state would regard them as Czechoslovak, and while Germanness would not be lost, Germans would be loyal to the new state. What changed were external

events, namely the rise of the Nazis in Germany. The influence of Nazi propaganda through the 1930s meant that, increasingly, members of the German minority looked to Nazi Germany, and became less likely to accept their new state (King 2005: 154-69). It established what Rogers Brubaker (1996) has described as a 'triadic nexus', in which Germany was now understood as the homeland state for the German minority, within the nationalizing Czechoslovak state, conditions which accounted for considerable instability. The Sudeten Homeland Front (SHF) emerged as the political carrier of this increasingly disaffected minority. Following the 1935 election it became the largest party in Czechoslovakia, and an internal threat to the very existence of a democratic state (Capoccia 2005: 71, 77-81).

Yet practices of federalism prevailed. The charismatic Masaryk had had a particular success in including German parties in government coalitions through his personal powers of influence, and this continued. As Giovanni Capoccia (2005: 90) writes, Masaryk and his successor, Beneš 'relied less on the formal powers granted to them by the parliamentary Czechoslovak constitution of 1920 than on the informal practices made possible by the political charisma of Masaryk himself, who during his fifteen year presidential tenure acquired broad influence on national politics.'

Government in interwar Czechoslovakia was organized primarily by means of a coalition, a combination of largely five Czechoslovak parties, 'the Petka': the conservative National Democratic Party, the Catholic People's Party, the moderate socialist parties, the Social Democratic Party and the National Socialist Party, and the largest and most important party for much of the interwar, the Republican Party of Agrarians and Peasants. There were many smaller parties on the extremes, left and right, as well as ethnic parties representing Slovaks and Germans. Masaryk and Beneš' aim, however, was to integrate moderate ethnic formations within this wider coalition, especially German. The key to this strategy was to keep Socialists and Agrarians united, regardless of the changing party composition of the

various coalition governments. The accommodation of the dominant Agrarian parties, both Czechoslovak and German, was therefore especially important, as was the incorporation of German Christian Democrat and Social Democrat parties in coalition governments. Indeed, a moderate coalition held firm during the crisis years of 1933 to 1938; its maintenance and its attempts to win back Sudeten German support, while marginalising the SHF through, for example, banning the use of foreign political symbols, ensured the political success of the democratic forces (Cappocia 2005: 73-4, 71-2, 77, 90-108).

It is possible to counterfactually surmise, as Capocchia (2005: 72) does, that Czechoslovakia could have withstood its internal challenges. The role of Nazi Germany sealed its fate. Following the Munich Agreement, it was dismembered in a series of steps: the German speaking Sudetenland was incorporated within the Third Reich, Silesia was lost to Poland and Ruthenia to Hungary, the Slovak Republic was created and Bohemia and Moravia became a Protectorate of the Third Reich. However, its consequences were also apparent in the postwar reconstituted Czechoslovakia. Beneš (1942: 235-9), the liberal politician who had done so much to bring together Czechoslovakia's nationally and ethnically diverse populations together in government, now supported the transfer of the German minority from Czechoslovakia, or certainly those who did not wish to be part of a Czechoslovak state, convinced that its accommodation had proved impossible. The implication was that only a culturally homogenous state could provide the necessary stability upon which democracy might be rebuilt. This, of course, is the premise that lies at the heart of the most celebrated theory of nationalism, that of the Czech philosopher, Ernest Gellner. The analytic point being made here is that tolerance of difference itself is easier when there is shared identity (Hall 2010: 310-20, 151).



## **Federalism before and following Federation: Canada**

Canada's federation and its practices of federalism are much longer established. At their core was an attempt to reconcile the competing political desires of British and French settlers. It was a federal spirit that made the Canadian Confederation possible. The French Canadian politician and businessman George-Etienne Cartier was especially important in ensuring that a federation, the first under the British Crown, was the result of constitutional negotiations in the mid-nineteenth century. It was a means of protecting French Canadian culture and language against the more centralising interests of British Canadians (Burgess 2012: 17-19).

However, the practices of federalism predate the 1867 Confederation in the ways in which political elites from the territorially concentrated French and British origin populations found ways to reach accommodation in their shared state, the Province of Canada. These practices, including government by grand coalition, the maintenance of self-governing communities, mutual veto, and proportionality, have since been labelled consociationalism (Lijphart 1977). Indeed, the Union governments from 1842 lay claim to be the first consociational democracy, predating the more celebrated Swiss Confederation by some six years (Noel 1993: 46). It was, in part, this history that inspired Henri Bourassa and the Nationalistes' political project in the early twentieth century. At a moment in which French Canadian influence in Confederation appeared to be diminishing through significant non-francophone immigration, the accession of new non-francophone provinces (British Columbia, Alberta, Saskatchewan) and the diminishing status of French in existing provinces (schooling crises in Manitoba and Ontario), they offered a binational vision of Canada, in which its distinct British and French nations would be accommodated consociationally (Kennedy 2013: chapter 6).

The Canadian Confederation and its particular form of federation has been the subject of considerable debate and interpretation, which broadly corresponds to anglophone and francophone scholarship on the topic. Among francophone scholars it is an understanding of federal relations that draws on this pre-Confederation history that dominates, in which autonomy is emphasised. In contrast, anglophone scholarship is more concerned with functional matters, with utility and efficiency in enacting public policy. Its origins lie in the postwar Canadian welfare state and the simultaneous growth of both tiers of government (Rocher 2009: 112; cf. Gavreau 2017: 283). Rocher (2009: 97-99) suggests that these contrasting interpretations are expressed best in the Québec government's Royal Commission on Constitutional Problems, the Tremblay Report of 1956, and the federal government's earlier Rowell-Sirois Commission and its Report of the Royal Commission on Dominion-Provincial Relations in 1940. He argues that subsequent interventions are in effect derivative of the arguments set out in these reports.

These conceptions of federalism are partially reflected in the views of the principal exponents of rival currents in Canadian liberalism, Pierre Elliot Trudeau and Claude Ryan, both francophone Quebecers. Their liberalism was key to understanding how they thought federalism should be organised and practiced. Michael Gavreau's (2017) brilliant biography of Ryan offers considerable insight into the emergence of these competing schools of thought and their intellectual origins. Ryan, the Catholic intellectual and editor of *Le Devoir* (1964-78), espoused a social liberalism and envisioned an asymmetric form of federalism in which French language and cultural rights would be guaranteed throughout Canada, yet Québec would be recognised as the political and cultural homeland of the French Canadian people. He was also pragmatic, though, and suggested that competencies might be shared between the Canadian and Québec governments. This was a clear reflection of his early mentors, the conservative Lionel Groulx and the liberal Olivar Asselin, through whom Ryan sought to

keep faith with Québec's Catholic tradition while still embracing a deep commitment to pluralism. This was a position, in broad terms, not dissimilar to the Nationalistes. In contrast, Trudeau's federalism was uncompromisingly rigid in its commitment to the symmetrical equality of provinces, with the central government accorded an elevated position. His advocacy of a highly individualised liberalism was similarly unyielding. He was dismissive of proposals to confer on Québec a special status based on historical argument, and was unwilling to contemplate additional powers (Gavreau 2017: 23-4, 290 482-3, 499-502, 181-2). This latter position, and the practices of federalism that emanated from it, held sway in Trudeau's years in power (1968-79, 1980-84).

In the lead up to and during Québec's Quiet Revolution these ideas came to the fore. During the 1950s Quebecers of varying political stripes came together in opposition to the societal dominance of Maurice Duplessis' *Union Nationale* governments in groups like *Cité Libre* or as critics within the Catholic Church. Fundamentally, and *contra* Behiels (1985), these were arguments *within* liberalism, and the product of a dynamic civil society. Contemporary federal relations in many ways date from this moment, the result of a more assertive Québec claiming a distinct federal relationship. These arguments, of course, influenced subsequent political debate and developments, most especially the tension between symmetric and asymmetric forms of federalism, not least given the prominent roles their advocates were to play in subsequent Canadian and Québec politics.

In this light, René Lévesque's sovereignty-association offered a new asymmetrical though no longer federal relationship in which Québec would be politically independent but would remain economically integrated. The proposal was defeated in the 1980 referendum. While Ryan led the No campaign during that referendum campaign, it was Prime Minister Trudeau's ultimately empty call for 'renewed federalism' that caught the attention. Yet it was not renewal but repatriation that became Trudeau's immediate post-referendum goal. The

British North America (BNA) Act, which had established Confederation through an act and then subsequent amendments of the British parliament was brought home and renamed the Constitution Act. This took place together with the creation of a Charter of Rights and Freedoms in 1982 without the consent of the Québec government. Its failure to effectively accommodate Québec's demands from both Liberal and Parti Québécois (PQ) governments shaped constitutional debate over the next decade and a half. The Meech Lake and Charlottetown Accords were the result, genuine attempts by Brian Mulroney's Progressive Conservative government to effectively bring Québec into the constitution, most famously through the constitutional recognition of Québec as a 'distinct society'. It was their failure, and the sense of rejection felt in Québec, which led to the second sovereignty referendum in 1995, and the narrowest of results, 50.58% No and 49.42% Yes.

The shared dialogical experience forged in the Quiet Revolution did translate into an especially important practice of federalism when those participants achieved later prominence in Canadian and Québec politics. While there were competing conceptions of Québec's place within Canadian Confederation, this was overridden by a commitment to provincial democracy forged during those years. Counter-intuitively, this understanding that permitted two referenda on Québec independence to be held might be considered a practice of federalism because it effectively recognised Québec's distinct position in Confederation. That is, Canada does indeed constitute an asymmetric federation. Québec enjoys many more powers and competencies than other provinces, not least in immigration and pensions, and yet the formal recognition of its national distinctiveness has been less forthcoming. The closest has been the passing of a parliamentary motion that recognizes that 'the Québécois form a nation within a united Canada', which was passed by the Canadian House of Commons on 22 November 2006.

## **Federation without Federalism? Spain**

Spain offers a very different sort of federation. Michael Keating (1999) has described it (and similar developments in the UK and Belgium) as being reflective of a ‘new asymmetrical territorial politics. Spain’s successful transition to democracy was made possible by practices of federalism. That is, there was a determination by key politicians to ensure recognition of Spain’s territorial diversity, most especially Catalonia and the Basque country, as being necessary to avoid another civil war (Elliot 2018: 227). This territorial recognition was constructed as part of an ‘all Spain’ set of reforms, and it was skilfully reinforced by ensuring that Span-wide elections preceded those to the re-established sub-state authorities (Linz and Stepan 1992). These institutional reforms were also reflective of wider societal changes afoot, which had over the preceding years led to ‘the return of civil society’ (Pérez Díaz 1998). This return and the civility that it engendered made possible the compromises that ensured a peaceful transition.

The constitution, therefore, was something of a fudge. The use of ‘nation’ was reserved only for Spain, and studiously avoided in referring to the place and powers of Catalonia and the Basque Country in the post-Franco constitution. While article 2 refers to the ‘the indissoluble unity of the Spanish nation,’ it guaranteed ‘the right of autonomy for the nationalities and regions that integrate it and the solidarity between them all;’ ‘autonomous communities’ (ACs) was preferred in title VIII, thereby avoiding a distinction between regions and the historic nations, and instead the two were effectively elided (Elliot 2018: 228). The tension was in striking a balance between unity and diversity. However, this constitutional ambiguity was often identified as a strength rather than as a weakness. It allowed all parties to find some recognition of their position, or they could simply choose to ignore it.

As a result of these political developments, post-Franco Spain was identified by social scientists as a model of a multinational state. Its form of asymmetric federation was especially lauded. Yet as important were the informal practices that existed in the relationships between, for example, Spanish Prime Minister Felipe Gonzales and Catalan President Jordi Pujol, members of Spain's first democratic generation. Both shared a background of resistance to Franco. The wily Pujol, in particular, was adept at exploiting political impasses in Madrid to the Generalitat's gain. During his twenty-three year reign as president, Pujol and his *Convergència i Unió* (CiU) oversaw an increase in the Generalitat's competencies from 89 as laid down in the 1979 statute of autonomy, and more than any other AC, including the Basque Country, to 274. To achieve this, the CiU kept the political temperature down in Catalonia, giving support to Madrid governments; but it crucially ensured a significant, though incremental, increase in the powers of the Generalitat. At the same time, this considerable state-building went hand in hand with cultural Catalanization in which the Catalan language received Generalitat support through its promotion in schooling and in the establishment of a Catalan Corporation of Radio and Television (Elliot 2018: 233, 235, 237).

This relatively quiet state/nation building, the result of practices of federalism, contrasted with instances in which the legality of the Spanish and Catalan governments' actions (and those of the other ACs) were challenged at the Constitutional Tribunal in Madrid. J.H. Elliot calculates that between 1986 and 1988 the Catalan government complained that there had been 77 breaches of the statute of autonomy by Spanish authorities; the Spanish government made similar complaints. These objections could become politically charged, most spectacularly surrounding the *Estatut*, a revision of the statute of autonomy agreed between the Spanish Zapatero Socialist government and the Maragall Catalan government in 2005; a modified version was endorsed by a Catalan referendum in

2006. This was an attempt to secure Catalan autonomy within a ‘genuinely federal’ Spain. There is an obvious parallel with the Meech and Charlottetown proposals and the attempts to accommodate Québec within the Canadian constitution. Spain’s conservative *Partido Popular* (PP) objections were constitutional. It objected to the use of ‘nation’ to designate Catalonia, and it opposed the elevated status that Catalonia would enjoy compared to the other ACs (with the exception of the Basque Country and Navarre, which enjoyed privileges dating from 1878). Four years later, the Tribunal ruled that the *Estatut* should be modified. But importantly and symbolically the reference to ‘nation’ was struck down since it had no juridical standing. While the PP hailed a victory, Catalan nationalists were incensed and support for independence increased (Elliot 2018: 237-39, 240-1).

With the CiU under the leadership of Artur Mas in Catalonia, and Mariano Rajoy and the PP in Madrid, following elections in November 2010, intransigence was the result. Both sides were locked into their respective positions and practices of federalism were absent. That said, Mas, a somewhat reluctant leader of the independence movement, did offer a compromise proposal that Catalonia could acquire the same fiscal powers as the Basque Country and Navarre; however, this was rejected. The PP had effectively undertaken an anti-Catalan campaign since the *Estatut* had first been proposed, and did not change course (Elliot 2018: 240-43, 238-9).

Rajoy’s refusal to negotiate with the Catalan government over new powers, a move which may have diffused the looming crisis between Madrid and Barcelona, instead escalated it. A non-binding referendum, or ‘citizen participation process’ on Catalan independence as it was renamed, was held on 9 November 2014, and while it secured 80% for independence, it did so on a 40% turnout. A rethink took place in the CiU, Mas stepped down, and he was replaced by a convinced independantist, Carles Puigdemont. There was effectively a vacuum at the centre with two general elections held in 2016; corruption scandals had beset both of

Spain's main parties, the PP and the Socialists (Elliot 2018: 248-49). The upshot was that there was no effective response to Catalonia's demands. Instead, a second referendum was held on 1 October 2017. It, too, lacked legality, and while support for independence was now 92%, it was again a 40% turnout. Like the UK, only the central government can authorise a referendum. Rajoy had not only refused to countenance a referendum on Catalan independence, but also actively sought to disrupt it. The intervention of Spanish police and Guardia Civil to close polling stations, and to seize ballot boxes was at best clumsy and ill judged (Elliot 2018: 240, 250-55).

The same might also be said of the Catalan government's declaration of independence on 10 October. This remained a referendum that had failed to secure legality. The immediate suspension of the declaration and the suggestion that new elections could be called was an attempt to ignite negotiations with Madrid; the Spanish Socialists suggested that Catalonia might be accommodated through a revised Constitution on more federal lines. However, when no engagement was forthcoming, in a rather last ditch and purely symbolic gesture the Catalan parliament voted to endorse a unilateral declaration of independence. In an unprecedented move, the Spanish government invoked Article 155 and suspended the Catalan parliament (Elliot 2018: 256-8). However, the Spanish government's pursuit of elected Catalan government ministers, the arrest of 12, the charge of 9 with 'rebellion', and the effective forced exile of Puigdemont (the refusal of a German court to acquiesce with a Spanish arrest warrant and its charge of rebellion was notable) defies any notion of civility. A breakdown in the practice of federalism marked the controversies surrounding the 2017 referendum on independence and its aftermath. This breakdown, should it continue, can only provide the independence movement with further support.



There are also structural causes behind this breakdown in the practices of federalism, rooted in the very logic of Spain's asymmetric devolution. That is, its tendency to symmetrize, with more recent Autonomous Communities acquiring the same powers as the historic (and original) ACs, such as Catalonia, gives rise to demands that their asymmetric status be preserved. At the same time, the apparent loss of competencies devolved to the ACs has resulted in a reputed loss of a *raison d'être* by the central government, with calls for it to re-centralize. The result is that relationship between the central government and especially the original ACs has become highly politicized (Máiz, Caamaño and Azpitarte 2010; Aja and Colina 2014).

The formalization of mechanisms for intergovernmental relations has led to further politicization, and in these relations, the party political colour of the tiers of government matters. This is especially the case where the ruling party in the central government and the AC government differs (Aja and Colina 2014). In Catalonia rule has alternated between CiU, now the Catalan European Democratic Party, and the Catalan Socialists (allied with the Spanish PSOE), though *Convergència* has supported both minority PP and PSOE governments in Madrid. This suggests that the practices of federalism are subject to the vagaries of party political advantage and strategy. Indeed, the Spanish PSOE government of Pedro Sánchez, formed in January 2018, with the support of Catalan, Basque and Valencian nationalists, has broken with the practice of the previous government and has undertaken to enter dialogue with Catalan nationalists.

The commentator John Carlin (2019) discerns a dark undercurrent in contemporary Spanish politics, one that harks back to the pre-democratic era, and that is not reconciled to democratic politics. It may be that a republican impulse is at work here; an impulse that, like republicanism in France, views Spain as 'one and indivisible' and is thereby intolerant of any threats to this integrity of Spain. This is a political philosophy which demands conformity,

the very opposite of liberalism's tolerance of diversity. The use of 'Catalonia,' however, has created much angst in the 'rest of Spain' and provided the PP and the extreme right Vox with an issue with which to mobilise. Its toxicity may also prove a stumbling bloc in relations between the parties on the left willing to seek compromise, the Socialists and Podemos. The latter supports the right of Catalans to hold a referendum.

### **Federalism without Federation: UK**

The United Kingdom's acquisition of some of the trappings of federation is more recent still. Scotland achieved devolved sub-state government only in 1999, during a moment in which the UK effectively established a quasi-federal system through a series of measures that devolved powers not only to Scotland but also to Wales, to Northern Ireland as a result of a separate peace process, and to London (this was to be part of a wider devolution to English regions). Until then, Scotland's institutional distinctiveness had been recognised through a mixture of formal and informal practices. Throughout, Scotland's 'national status' was never in question. The practice of federalism not without moments of tension was evident, therefore, prior to Scotland's formal institutionalization as a sub-state government.

Scotland, in other words, enjoyed very considerable autonomy following its union with England in 1707. Its institutional trinity of church, education, and law (local government might also be included) continued to be the nexus through which domestic Scottish politics were undertaken through the eighteenth and much of the nineteenth centuries. Following nationalist agitation, in the guise of home rule campaigns, administrative devolution was initiated from the late nineteenth century, notably in the form of a Secretary (of State) for Scotland and a Scottish Office to administer UK domestic policy in Scotland. This administrative devolution ensured that the development of the postwar British welfare state had distinctly 'Scottish characteristics' (Kennedy 2013: chapter 2; cf. Paterson 1994).

The recognition of Scottish institutional distinctiveness and the provision of a degree of political voice within the British political system constituted practices of federalism. It was the failure to adhere to these established practices that led to the ultimately successful campaign for a Scottish Parliament. That is, Scottish institutions provided no check on Margaret Thatcher's radical Conservative agenda, epitomised by the introduction of a Poll Tax in Scotland one year ahead of the rest of the UK. Instead, it resulted in a determination to establish a parliament for Scotland.

With the establishment of a Scottish Parliament, together with a Welsh Assembly and a Northern Ireland Assembly, following the Good Friday Agreement (GFA), a quasi-federation has developed across the UK. However, a formal mechanism to adjudicate competing interests remains absent, although the British-Irish Council, established by the GFA, provides a forum for the devolved nations, the crown protectorates, and the UK and Irish governments. It is, therefore, the practices of federalism rather than formal institutions that are essential.

Two referenda offer key instances in which the presence and absence of practices of federalism are highlighted. Counter-intuitively, Prime Minister David Cameron's decision to permit the newly elected majority Scottish National Party (SNP) government to proceed with its manifesto commitment to hold a referendum on independence can be considered a practice of federalism. Since the UK Constitution is a 'reserved matter', the Scottish Government had to seek the UK government's agreement that the constitution should be devolved to ensure a legally binding referendum. This was recognition of the composite nature of the British state and its multinational character; it was perhaps also a calculation that the SNP was unlikely to win (polls at the time showed only 30% support for independence). Further, the British and Scottish governments agreed the terms for the referendum vote: the question, the date, the

electorate (including lowering the voting age to 16) and the authority that would organise the ballot. This became known as the ‘Edinburgh Agreement’. In the end, while the ‘Yes’ vote increased considerably through the campaign, it was ultimately defeated by 55% to 45% in the 2014 vote. By providing ‘voice’, Cameron may have prevented ‘exit’ (cf. Hall 2013: 68).

However, Cameron’s calculation backfired for the next referendum on UK membership of the European Union (EU) in 2016. That referendum was lost, 51.9% to 48.1%. His replacement as prime minister, Theresa May, was keen to emphasise her unionist credentials, resolute that she would proceed for all the United Kingdom in Brexit negotiations with the EU. Indeed, her first act as prime minister was to visit Scotland and its First Minister, Nicola Sturgeon. While May had supported Remain in the referendum, though not vociferously, she was keen to emphasise that her efforts would be directed at bringing together Remain and Leave supporters, and those parts of the country where their respective support was concentrated.

The referendum result revealed the extent of the divergence in political cultures among the nations and regions of the United Kingdom. While Scotland, Northern Ireland (NI) and London voted to remain, Wales and the English regions voted to leave. Indeed, Brexit was in many ways ‘made in England’; antipathy to the EU has been consistently pronounced in England before and after devolution. In the Brexit referendum, a new, post-devolution, distinct English national identity drove support for Leave (Henderson et al. 2017). While Scotland voted overwhelmingly to Remain (62%), England voted by a clear majority to Leave (53.4%). Reconciling this divergence would be difficult. Yet, ultimately, an ‘all British’ approach, which might have reached beyond convinced Brexiteers was discarded in favour of a ‘hard Brexit’ that sought withdrawal from both the EU’s single market and customs union, an approach which appealed most to Tory Brexiteers. These became the British government’s redlines in its negotiations with the EU.

When May's decision to call an early general election and secure an enhanced mandate backfired, and the Tories lost their overall majority, the approach did not change. Instead, May turned to Northern Ireland's Democratic Unionist Party (DUP), the largest Protestant unionist party, crucially a Brexit supporting party and out of step with majority opinion in Northern Ireland. This effectively added a further complication. Northern Ireland possesses the UK's only land border with the EU; its fate was debated little during the referendum. May was adamant that there would be no return to a 'hard border'. Indeed, the EU had effectively facilitated the GFA by ensuring borderless movement between the UK and the Republic of Ireland. In the British Government's negotiated agreement with the EU, Northern Ireland's 'soft border' with the Republic was to be protected by a 'backstop' ensuring that even under circumstances in which the UK and EU failed to agree trade terms, NI would continue to be governed by EU trade rules (later extended to the rest of the UK). This was too much for the DUP, and was seized upon by the Conservative 'European Research Group' of Conservative MPs in their opposition to the May deal. The subsequent failure of the House of Commons to pass the deal (on three separate occasions) paved the way for Boris Johnson's accession as prime minister.

Despite his 'awesome foursome' rhetoric, and his tour of the devolved nations on assuming office in July 2019, Johnson has done little to placate their governments' concerns. If anything, there is hardening of the line on Brexit. Notably, the former Remain supporting Secretary of State for Scotland, David Mundell, was replaced with Leave supporting Alister Jack, against the wishes of the Scottish Tory leader, Ruth Davidson, who later resigned. Another Leaver, Michael Gove has overall responsibility for the Brexit implications for the devolved nations. At the same time, support for Scottish independence has increased. Though like May before him, Johnson will not grant a second referendum, referred to as 'IndyRef2'.

## **Reprise: The Practices of Federalism and Its Discontents**

Much contemporary politics is characterised by the tensions between unity and diversity.

Federations, or federated states, in which there is a clear division in jurisdiction by their very nature are especially susceptible to these threats. Institutions are certainly more resilient than practices; however, on their own they are no guarantee of the necessary compromises that reconcile unity and diversity. William H. Riker's (1964: xi, 5) classic study suggested that the definition of federalism is unproblematic since it is a 'precisely definable and easily recognizable constitutional artefact' demarked as it is by specific institutions: 'a government of the federation and a set of governments of the member units, in which both kinds of governments rule over the same territory and people and each kind has the authority to make some decisions independently of the other.' Yet Riker's definition allowed Canada, the United States, Yugoslavia, and the Soviet Union to be classed as federal systems based on their possession of a set of institutions, and not on the actual practice of these states.

Institutions are poor indicators of the practice of federalism. The institutional mechanics of federations are important, yet it is the more informal practices of federalism that provide the lubrication.

In each of the cases reviewed, practices of federalism were examined against the backdrop of liberal democracy, which Burgess viewed as vital to federalism's successful operation. The review has likewise hinted at the role of civil society in establishing a political culture conducive to the practices of federalism (Burgess 2012: chapter 8). The threats to the practices of federalism across the four cases have been distinct. The most profound was the geo-politically driven existential threat faced by interwar Czechoslovakia; yet remarkably, practices of federalism were innovated and prevailed. In Canada practices of federalism have been closely linked to debates surrounding the form of federation, symmetric or asymmetric, that would best accommodate Québec, while in Spain, it has been the absence of

practices of federalism that have surrounded the failure to accommodate Catalonia. While practices of federalism ensured a peaceful referendum on Scottish independence in the UK, the constitutional crisis that followed the Brexit referendum was entirely self-inflicted, and has deepened fissures in the UK's territorial politics. The shifting balance of electoral politics played an important role in each of these political moments.

While the cases chosen are from within the developed North, they resonate with developments in the contemporary South. India is a case in point. In its short history, India has combined an ability to accommodate cultural and ethnic diversity and foster national coherence (Stepan, et al. 2011); it is a composite state, which includes recognisably federal institutions. Since 2014, however, the Hindu nationalist, Bharatiya Janata Party (BJP) and its powerful Prime Minister, Narendra Modi, have effectively 'Modi-fied' Indian federalism since becoming a majority government. Curiously, despite its all India Hindu nationalism, the BJP had championed state autonomy and had been willing to make common cause with Sikh nationalists in Punjab and regionalists in Assam and Tamil Nadu. Yet with the exception of fiscal matters, particularly in relation to India's Goods and Services Tax which have remained largely untouched, there has been an increasing political and administrative centralisation. Most striking has been the failure to recognise the 'special regional autonomy' in the restive state of Jammu and Kashmir. No longer dependent on smaller state parties for support, the BJP has played to its supporter base by calling for a ban on the slaughter of cows and the selling of beef in the Muslim majority state. It eschewed calls to reinstate full autonomy or engage with secessionists, and called off talks with neighbouring Pakistan on the region (Sharma and Swenden 2018: 54-55, 61-64).

In August 2019, however, following its landslide re-election, the Modi government went much further and broke with 70 years of practice and without consultation with state elites imposed direct rule on Jammu Kashmir and abolished its remaining autonomy. This

was in direct contravention of Article 370 which detailed the terms on which it had entered India. The special status that Muslim majority Jammu and Kashmir enjoyed has long irritated Hindu nationalists. It also abolished the residency requirement for property ownership in the state, paving the way for a potential demographic shift in the state. This development is especially notable in a country with an established federal tradition in its governance of its diverse democracy. This majoritarian version of democracy contrasts with India's historic liberalism, and sets a worrying precedent for other parts of India, such as Nagaland, Uttar Pradesh and Bengal, which enjoy an asymmetric federal arrangement.

Ernest Gellner understood that democracy need not lead to softer political rule and liberty (Hall 2010: 151). Democracy does not guarantee liberalism, since many illiberal impulses may prove democratically popular. The distinction drawn here between institutional federation and practices of federalism might be similarly construed. The institutions of federalism are not a guarantee of the practices of federalism. Indeed, federalism has historically been posited as a response to what Tocqueville labelled the 'tyranny of the majority', an institutional arrangement that secures the diversity upon which liberalism embraces, albeit within clear limits. In multinational democracies this is especially important. Brendan O'Leary has argued that a dominant people, or in his terms, a *Staatsvolk*, has proved determinative to the stability of federations (O'Leary 2001; cf. McGarry and O'Leary 2009). The corollary, among states without a *Staatsvolk* in which there is a balance of national or ethnic groups, consociational arrangements are necessary. Masaryk's Czechoslovakia and Union era Canada are exemplars of states, which undertook such practices. However, the rise of a 'new majoritarianism' across states may challenge this premise, especially since it is based on the idea that 'A *Staatsvolk* can feel secure—and live with the concessions attached to pluri-national federation' (McGarry and O'Leary 2009: 15). The very insecurity of majority Castilians in Spain and the majority English in the UK must be part of an



explanation for the reaction to the referendum in Catalonia and support for Brexit in the UK. Curiously, a survey of UK Conservative party members prioritised Brexit over the maintenance of the British union. It is on liberalism, and tolerance, as Mill implied, that practices of federalism have depended. Its current fragility has implications for federations, in all their guises, regardless of how well its institutions are designed.

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